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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 4, 2016

4:07 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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2 Telephone Conference, on the Record, Regarding the Reed Matter.

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A P P E A R A N C E S : (TELEPHONICALLY)

REED SMITH LLP

Attorneys for ResCap Borrower Claims Trust

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Suite 3100

Philadelphia, PA 19103

BY: BARBARA K. HAGER, ESQ.

ALSO PRESENT:

FRANK J. REED, IV, Creditor - Pro Se

RESIDENTIAL CAPITAL, LLC, et al.

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1 P R O C E E D I N G S

2 THE COURT: All right, we're on the record in
3 Residential Capital, number 12-12020. This is a telephone
4 hearing on the record in connection with the ResCap Borrower
5 Claims Trust objection to claim number 3759, filed by Frank
6 Reed.

7 May I have the appearances, please?

8 MS. HAGER: Good afternoon, Your Honor. This is
9 Barbara Hager with Reed Smith, co-counsel for the Borrower
10 Claims Trust.

11 THE COURT: Mr. Reed?

12 MR. REED: Your Honor, this is Frank Reed, creditor
13 pro se.

14 THE COURT: All right. Thanks, Mr. Reed.

15 Mr. Reed, let me start with you. Why don't you tell
16 me, what's the additional discovery that you want to take and
17 tell me the reasons why?

18 MR. REED: I thought -- and I'll -- I thought it was
19 no more discovery. What I was seeking to do was have the
20 various declarants put their declarations on a sworn deposition
21 because of the rule that I cited -- I don't have it in front of
22 me at the moment, -- whereby a deposition testimony can be
23 introduced at trial if a witness is outside of a hundred-mile
24 radius.

25 I learned of this just recently. I seek no more

1 information other than what was said in the declarations. I
2 seek no other documents, no further discovery, only the
3 documents that were attached or cited in the declarations. I
4 think they're all attached to it. And the purpose of it is
5 very transparent. And it's -- and that is I fail to find the
6 mechanism whereby -- if I subpoena witnesses outside the
7 hundred-mile radius, if they do not show, I'm ignorant of any
8 mechanism which I can use to compel them to appear at trial in
9 September.

10 However, I --

11 THE COURT: That's true. You can't if they're more
12 than -- unless they appear voluntarily and are more than a
13 hundred miles from the court, you can't compel them to come.

14 MR. REED: Correct. So I found this rule that says
15 their testimony's in a deposition can be introduced for the
16 truth of the matter or any reason at trial. And I cited the
17 rule. And so I don't seek any additional discovery, although I
18 don't see an order stopping me personally from doing more
19 discovery. I'm not going to play coy. I know we've moved
20 along in this process, and I don't feel that I have to play coy
21 in that regard.

22 I am not seeking anything new.

23 THE COURT: Who -- Mr. Reed, who are the witnesses who
24 you wish to depose?

25 MR. REED: Your Honor, one is a county official who

1 provided tax records and ownership records from purchases and
2 sales of various property over the course of a number of years
3 in Henrico County. Another is his assistant. The -- another
4 one is the appraiser who appraised my property in Virginia back
5 contemporaneous in 2008. He provided the appraisal, who has no
6 objection to it being used as an -- in our proceedings, and he
7 has stated in the declaration that it is true and accurate and
8 that he did perform it and that the contents are true and
9 accurate. And he's willing to be deposed to state on the
10 record so that there's no question as to the, not just
11 authenticity, but the contents of the appraisal.

12 Then there are suppliers -- a number of suppliers and
13 contractors who have provided statements and/or invoices from
14 their records for what has -- was paid for in the expansion of
15 that property before it stopped, and also some contractors who
16 are owed money for work that was done but not paid fully. And
17 so those are -- I'm trying to recover for those also who I owe,
18 because it's an ascertainable loss under the law, a debt owed
19 is something that I can pursue in this forum.

20 And so we have people who have been paid eighty
21 percent of their bill, fifty percent of their bill, ninety
22 percent of their bill. And they want to -- they testified this
23 is how much I've received, here's some invoices, this is what I
24 have. So we have the county official testifying to the --their
25 declaration and providing the signed, sealed documents from the

1 county. We have the appraiser and his documents that were
2 produced at the time, long before this, contemporaneous to my
3 work on the house. The appraisal was from 2008. It's in his
4 records. It's accurate, and he's willing to testify to it.

5 I mean, I could seek to have it admitted as a business
6 record, but I'm trying to avoid what happened to me before.
7 And I don't -- and just trying to avoid that because these
8 facts are true. They're relevant, and they are -- I don't want
9 them excluded because of some mistake as a matter of rule,
10 instead of a matter of reality.

11 THE COURT: Mr. Reed --

12 MR. REED: And so I discovered --

13 THE COURT: Mr. Reed, how many witnesses are you
14 seeking to depose? Because you listed -- let me finish. You
15 listed suppliers and contractors. What I'm trying to know is
16 precisely how many people are you seeking to depose.

17 MR. REED: I think it's twelve, and they have like an
18 hour each set aside for two days. That's it. We'll take one
19 hour for each person.

20 THE COURT: Well, if you take their depositions, Ms.
21 Hager's entitled to cross-examine them. So you may think it's
22 an hour, but that doesn't mean it's an hour.

23 MR. REED: I understand that if I -- I've tried
24 to -- I can provide more time if I need to. And if I miss out
25 on some, I don't know. I'm just trying to, like I said, get

1 that -- just the declaration in. But if -- I now realize what
2 you're saying, that you think -- they may want to -- have a lot
3 of questions from me.

4 THE COURT: Let me ask you a couple of more questions,
5 Mr. Reed.

6 MS. HAGER: But --

7 THE COURT: Just stop, Ms. Hager. Not yet.

8 Mr. Reed --

9 MR. REED: Your Honor --

10 THE COURT: No, just stop, Mr. Reed. Let me ask my
11 question.

12 With respect to the tax records, is all you're trying
13 to do is authenticate those documents which you want to
14 introduce into evidence? Because there are separate rules of
15 evidence that deal with the admissibility of official records,
16 is -- are you -- do you want to depose the tax -- I don't know,
17 you said it was to introduce tax records from various sales,
18 and both the recorder and the assistant. Is all you're trying
19 to do is authenticate the documents that you wish to use?

20 MR. REED: Yes. In that case, yes, authenticate them,
21 but not just authenticate them, but for their substance as
22 well, for the truth of the matter of their -- of the -- that I
23 did indeed go to this property and it was purchased at this
24 dollar amount and sold at that dollar amount.

25 THE COURT: Okay, let me stop --

1 MR. REED: And that's --

2 THE COURT: Stop. Have you given Ms. Hager a copy of
3 the documents that you want to introduce, that you say are
4 official public records?

5 MR. REED: Long ago, Your Honor, when I had my
6 deadline for producing those documents.

7 THE COURT: Okay, all right.

8 All right. Ms. Hager, let me hear from you.

9 I'll give you another chance, Mr. Reed. But let me
10 hear from Ms. Hager first.

11 MS. HAGER: Yes, Your Honor, thank you. Your Honor,
12 with respect to -- with respect to the subpoenas, I guess,
13 generally, of course, my concern when I saw them was that my
14 understanding was we were through with discovery. And knowing
15 that we're on a tight deadline, I had concerns about that. Two
16 of the people who are on the list -- or excuse me, two of the
17 people for whom Mr. Reed sent out subpoenas are not on his
18 witness list. And now I understand, I think, that one of those
19 two is the person that he wants to use to authenticate the
20 Virginia tax records. That may be a nonissue.

21 The other, I took from Mr. Reed's earlier email today,
22 is someone who he previously had gotten a declaration for but
23 inadvertently hadn't previously given it to me by the deadline
24 or included him on the witness list. So --

25 THE COURT: Let me -- I just want to stop you. I want

1 to know -- I didn't quite understand that last statement.

2 MS. HAGER: Sure. There's an individual who was
3 subpoenaed by the name of David Houseman (ph.), who did not
4 appear on Mr. Reed's witness list and for whom Mr. Reed did not
5 supply a declaration previously.

6 THE COURT: Yes.

7 MS. HAGER: Mr. Reed sent me an email earlier today in
8 which he explained that he had gotten a declaration from Mr.
9 Houseman earlier on but inadvertently did not produce it to me.
10 And I didn't have a chance to look more closely at his email.
11 There were some attachments. It may be that it is now
12 attached, and perhaps I do now have it. But I guess what I'm
13 trying to say is that, by the due date, he hadn't produced
14 that. And he had not provided that declaration or made Mr.
15 Houseman's name available.

16 There's another individual who was subpoenaed by the
17 name of Stevie Watson (ph.), who I deposed last month, I
18 believe, or perhaps back in June. So I'm not sure why she
19 would be subpoenaed again. Mr. Reed was there and had a chance
20 to ask her at that time.

21 THE COURT: Did he do that? Did he ask questions?

22 MS. HAGER: With respect to her, I don't recall
23 offhand. Some of the depositions we've had, he has asked
24 questions and a few he has not. That one in particular, I
25 don't remember. And I apologize. I don't have it in front of

1 me.

2 THE COURT: Okay.

3 MS. HAGER: The other folks on the list are mainly, as
4 Mr. Reed said, they seem to be suppliers of materials with
5 respect to work that was being done on one or more of his
6 properties in Virginia. And one of the individuals was the
7 appraiser who provided the as is appraisal for the property at
8 Old Dell Trace in Richmond. I indicated to Mr. Reed once I got
9 these subpoenas that I would stipulate to -- because
10 I -- initially, I thought he was doing this for authentication
11 purposes. And I told him that, with respect to ten of the
12 twelve individuals listed, that I would be -- excuse me, eight
13 of the twelve individuals listed, that I would be amenable to
14 agreeing to authenticity of those declarations.

15 But then, subsequently, I took from an email that,
16 with respect to all of these individuals, he's also concerned
17 about hearsay issues so wants to have a deposition so that he
18 doesn't have an issue with admissibility and, of course, with
19 getting these folks to New York.

20 I'll say that, obviously, we're on tight deadlines.
21 If Your Honor is inclined to let some of these go forward, I
22 think that would really be pushing up against the deadline of
23 the 12th for motions in limine and the pre-trial -- joint pre-
24 trial order. If so, in the event that these go forward, I
25 think we would maybe need to think about pushing other dates --

1 THE COURT: I'm not pushing any dates.

2 MS. HAGER: -- back to accommodate --

3 THE COURT: I'm not pushing any dates.

4 MS. HAGER: Okay.

5 THE COURT: The dates are --

6 MS. HAGER: Yeah. I mean, if --

7 THE COURT: The dates are set.

8 MS. HAGER: Sure. Well, these going forward next week
9 is -- I mean, I think he's out of time to do it, because even
10 though the order doesn't say that discovery closed, I mean, I
11 think a fair reading of it is that it did because we've
12 basically done everything. All documents have been exchanged.
13 The witness lists have been exchanged. The depositions of the
14 other party's witnesses have happened. I did not take
15 depositions of these individuals that Mr. Reed is now seeking
16 to depose a month and a half after I took them.

17 We were already down in Virginia twice taking
18 depositions. So I feel that, given Your Honor's prior
19 instructions and the schedule as we have it, that these are out
20 of time.

21 THE COURT: Well, let me just say first, for anybody
22 who was not listed, I required the disclosure of each side's
23 witnesses. So you -- Ms. Hager, you've said that two of the
24 witnesses are not on the witness list. They're not testifying,
25 period, Mr. Reed.

1 MR. REED: Your Honor, I would like to clarify that
2 one -- the one that was not presented, that's fine. I mean, it
3 was a mistake. I received his declaration. It went into -- it
4 went to a different email of mine, and I work out of the
5 primary email with Ms. Hager. And I just didn't send it.
6 I -- it's an error on my behalf. We received it in time. I
7 had it in time. It's dated, time stamped, everything. And if
8 I -- we miss out on that for that gentleman, I feel bad, but
9 that's what's going to happen.

10 THE COURT: Who's --

11 MR. REED: The second one is --

12 THE COURT: -- who's the other person? Ms. Hager
13 identified David Houseman as one who is not on the witness
14 list. Who is -- Ms. Hager, who is the other person not on the
15 witness list?

16 MR. REED: He was listed --

17 MS. HAGER: Tom --

18 MR. REED: -- on the generic form.

19 THE COURT: Just a second, Mr. Reed, okay?

20 Ms. Hager, who was on the other person who is not on
21 the witness list?

22 MS. HAGER: Thomas Little (ph.).

23 THE COURT: Mr. Reed, was Thomas Little on your
24 witness list?

25 MR. REED: He was -- my witness list was -- contained

1 a list of people who I thought -- who were unnamed, but listed
2 as authorized for authentication by their -- either employer or
3 government agency. So Mr. Little, for example, I put
4 representatives from Henrico County for the documents I'd be
5 seeking from Henrico County. But I didn't have Mr. Little's
6 name.

7 THE COURT: Tell me this, Mr. Reed. Who is Mr.
8 Little?

9 MR. REED: He's the tax assessor or the head tax
10 assessor or head of the tax office for Henrico County,
11 Virginia.

12 THE COURT: And what is it that you want to depose him
13 about? You're trying to authenticate a document?

14 MR. REED: Yes, the -- that goes back to what you were
15 talking about in the beginning, Your Honor --

16 THE COURT: Okay.

17 MR. REED: -- that there might be a different rule
18 where the tax -- where these sealed, signed government
19 documents are admissible under a different methodology.

20 THE COURT: All right. May I ask you this, Mr. Reed?
21 Have you given Ms. Hager a copy of whatever government records
22 that you want to introduce at trial?

23 MR. REED: Yes, those were provided with the
24 dec -- accompanying declarations back at the time when it was
25 required.

1 THE COURT: Okay. And Ms. Hager, are you able to
2 agree to the authenticity -- if you have vehement objections,
3 I'm not dealing with those now. But I don't want Mr. Reed to
4 face an issue at trial where he goes to introduce an exhibit
5 and the objection is lack of foundation because he hasn't
6 established that it's authentic. If you had an objection as to
7 authenticity -- he's said he's given you the documents. If
8 they're government records, if you intend to object on
9 authenticity, I'm going to let him take those depositions,
10 okay?

11 I don't consider those that he's trying to
12 authenticate documents so they're admissible. I don't hear Mr.
13 Reed saying that he wants to offer those witnesses for any
14 other purpose. If he's -- if there are people he wants to
15 depose who are not on his witness list, but they're government
16 officials, and the purpose of the deposition is to authenticate
17 documents, if you'll stipulate to the authenticity, then
18 there's no reason for the deposition. But if you can't -- I'm
19 not forcing you. If you won't stipulate to the authenticity,
20 I'll let Mr. Reed take those depositions.

21 There's -- Mr. Reed, those two other people are
22 government employees who you wish to depose if you need to
23 authenticate documents, correct?

24 MR. REED: I'm sorry, I didn't hear the first part of
25 your question.

1 THE COURT: Okay. Two of the people of the twelve who
2 you want to depose are employees or officials of government
3 agencies, and you want to depose them to authenticate
4 government records that you want to be able to introduce at
5 trial. Do I understand that correctly?

6 MR. REED: That is correct, Your Honor.

7 THE COURT: Okay. So look, with respect to those two,
8 Ms. Hager, we don't have to resolve it on the phone today. You
9 need to resolve it with Mr. Reed either later today or no later
10 than tomorrow morning. If you can stipulate to the
11 authenticity of the documents, then he doesn't need to take
12 those two depositions. That leaves ten that we have to deal
13 with.

14 MS. HAGER: Right. And so I think we're talking about
15 Thomas Little and Elizabeth Welch (ph.). And if I am
16 remembering the documents correctly that came, I believe from
17 Elizabeth Welch, with not a declaration, with a letter, if I'm
18 remembering them correctly, those are fine because I think that
19 they're government records and I wouldn't have a problem.

20 THE COURT: Okay.

21 MS. HAGER: I wouldn't be objecting to those for
22 authenticity purposes.

23 THE COURT: Okay. Just, I want you to final -- here,
24 I -- my ruling with respect to those is -- is that the other
25 person, Elizabeth Welch, Mr. Reed?

1 MR. REED: I'm sorry?

2 THE COURT: Are the two government employees Thomas
3 Little and Elizabeth Welch?

4 MR. REED: Yes.

5 THE COURT: Okay. So with respect to those two, if
6 Ms. Hager will agree to the authenticity of the records, then
7 those depositions don't need to be taken. If she, for whatever
8 reason, won't agree, then you can go ahead and take those
9 depositions, okay? For that, you will work out. But that
10 leaves ten people to deal with.

11 Now, of the other ten, are all of them on Mr. Reed's
12 witness list, Ms. Hager, other than David --

13 MS. HAGER: No.

14 THE COURT: We've dealt with David Houseman.

15 MS. HAGER: I don't think we did deal with David
16 Houseman. David Houseman would be the other name who is not on
17 the list.

18 THE COURT: I know. I said that -- are the
19 other -- we're dealing with ten people, nine -- if Mr.
20 Houseman's not on the list, are the other nine on the witness
21 list?

22 MS. HAGER: Yes, Your Honor.

23 THE COURT: Okay. So Mr. Reed, the procedure I follow
24 at trial, which I've explained before -- and since you've been
25 through one trial with me, I think you understand this -- I

1 take written direct testimony, declarations provided that the
2 witness appears at trial for cross-examination. Okay? It's
3 not my procedure to allow you -- I'm putting aside whether
4 you're entitled to depose people, but you can't simply depose
5 and say is this your statement that you gave under oath and
6 that that's sufficient. Okay?

7 For those witnesses, who I take their direct testimony
8 in written form, they are to appear in my courtroom to testify
9 for cross-examination. If you're correct that -- if there are
10 witnesses who you can't subpoena or you can't compel to come
11 because they're more than a hundred miles from the court, you
12 are generally correct that you can take their deposition and
13 offer their deposition testimony.

14 What I am concerned about is that, while there is no
15 written order that set a deadline for you to complete your
16 deposition discovery, in the last two telephone hearings we had
17 a discussion and a deadline wherein you were going to take the
18 depositions. Well, now, suddenly, there are an additional nine
19 depositions that you want. As I said, as to Mr. Houseman, you
20 didn't disclose him as a witness, I'm not going to allow you
21 add the witness now.

22 But as to the other nine, which you did disclose the
23 names, where are they located, generally? Do you have the
24 addresses in there, Ms. Hager? Are they all in Virginia?

25 MS. HAGER: They are --

1 MR. REED: They're all in --

2 MS. HAGER: -- all in Virginia.

3 MR. REED: They're all in Richmond, Your Honor,
4 within, I don't know, maybe eight to ten miles of -- centered
5 of where we were taking the depositions or scheduled to take
6 them.

7 THE COURT: And on what subjects are they testifying?

8 MR. REED: Seven of them, I think -- I don't have
9 it -- I'm having trouble connecting to my internet while I'm
10 talking to you on the phone. Seven of them, I believe, are the
11 contractors and suppliers. The eighth one is the appraiser,
12 and then the ninth one -- I can withdraw Stevie Watson. I
13 have -- I reviewed her deposition, and we can withdraw her.

14 THE COURT: Okay. So there are -- so we're basically
15 talking about eight people, assuming that they're the -- that
16 you work it out as to Thomas Little and Elizabeth Welch, there
17 are eight other people who you did list on your witness list
18 who you wish to depose. Am I understanding that correctly?

19 MR. REED: Yes. And again, Your Honor, I apologize,
20 but this is -- as I stated, I've recently learned of this.
21 Otherwise, in the previous conversations, I would have brought
22 it up. I would have served the subpoenas. And I would have
23 done it, especially in the time that we were down in Virginia.

24 THE COURT: Okay.

25 MR. REED: It's not convenient for me as well.

1 THE COURT: Mr. Reed, did you -- with respect to those
2 eight people, have they agreed to appear for depositions?

3 MR. REED: Yes.

4 THE COURT: And have you selected dates when you're
5 going to do them or want to do these?

6 MR. REED: I have the 8th and 9th, and I think
7 there's -- I think --

8 THE COURT: August 8th and 9th?

9 MR. REED: Yeah, because I was trying to get them -- I
10 was trying to get it done as quickly as possible --

11 THE COURT: I know. I'm just --

12 MR. REED: -- as early as possible.

13 THE COURT: I'm -- yeah, I'm just asking the question.
14 I'm not challenging you about it. I'm just -- so you want to
15 take, originally -- you dropped one of them. But as to eight
16 people, you were going to take their depositions in Richmond on
17 August 8th and 9th. Do I understand that correctly?

18 MR. REED: Yes.

19 THE COURT: Okay. And the subjects which you wish to
20 cover with them in a deposition are the subjects on which they
21 gave their declarations. Do I understand that correctly too?

22 MR. REED: Absolutely.

23 THE COURT: Okay. Ms. Hager, let me hear you further.
24 I'll tell you right now I'm inclined to let Mr. Reed -- look,
25 he's not a lawyer. And he listed these eight people on his

1 witness list. He can't compel them to come. I won't permit
2 the use of their declarations unless they -- unless you either
3 agree or they show up in my courtroom for cross-examination.
4 But I don't -- you would -- I take it, Ms. Hager, you would
5 agree that if the witnesses are more than a hundred miles from
6 the court that Mr. Reed would be entitled to take their
7 depositions. And if the testimony, if his questions are
8 proper, he'd be entitled to offer that testimony at trial. Do
9 you agree with that?

10 MS. HAGER: I do agree with that, Your Honor.

11 THE COURT: Okay. All right.

12 So look, it seems to me -- and Mr. Reed, you said you
13 thought you would be an hour with them, and that may well be.
14 But Ms. Hager obviously is entitled to cross-examine them. So
15 I can't -- I don't know exactly how much time each person will
16 take.

17 Ms. Hager, obviously, I don't have the declarations
18 and I don't want to see them at this point.

19 But Mr. Reed, it may be that if you speak to Ms. Hager
20 she would agree that you could simply use the declarations and
21 not have to go through the depositions. I don't know. That's
22 completely up to her. I'm not forcing her to do that. The
23 government officials is a different story. You just want that
24 to authenticate documents, and it sounds like you'll be able to
25 work that out.

1 If she doesn't want to agree -- and she's perfectly
2 entitled not to, because she would -- under my procedures, she
3 would be entitled to cross-examine each of these witnesses in
4 the courtroom, okay? It may be -- I don't know what the
5 subjects -- or you said contractors who gave you invoices. It
6 may be that you're not going to question some of the invoices.
7 I don't know.

8 So as to the eight people, I will permit Mr. Reed to
9 go forward with the depositions. Are those dates, August 8th
10 and 9th, are they available for you, Ms. Hager?

11 MS. HAGER: They are generally, Your Honor. I may
12 have issues being physically present in Virginia, so I may do
13 it by phone. I've actually got a personal issue at the moment.
14 My dad has Stage IV lung cancer, and we're in the midst of
15 chemo. I'm in fact at the treatment center right now. So
16 that's tying up time. But I am sure that if these go forward I
17 could do it telephonically. That is not a problem for me. I
18 don't feel the need to necessarily be with these particular
19 individuals.

20 So if these go forward, I can certainly call in, and
21 that would be acceptable.

22 THE COURT: You and Mr. Reed work that out. I'll just
23 tell you, when I was in practice, the few times I tried to do a
24 deposition by telephone it was a mess.

25 MS. HAGER: I know. I just don't have other options.

1 We only have one more week.

2 THE COURT: I know. Do you have anybody -- any of
3 your colleagues who you can send? I'm not -- look, you will
4 deal with that. Yes, Ms. Hager, I will permit you to do your
5 participation in the depositions by telephone. Work out with
6 Mr. Reed and make sure that it's at a place where there's a
7 speakerphone.

8 And I just had one miserable experience that I
9 remember trying to do a deposition examination -- I wasn't the
10 main lawyer doing it -- by telephone. The speaker didn't work
11 right, couldn't hear. So I just -- the logistics, best laid
12 plans don't always work very well.

13 MR. REED: Your Honor --

14 MS. HAGER: Right. I'm --

15 THE COURT: Mr. Reed, go ahead.

16 MR. REED: I'm using a reputable and known
17 stenographic service.

18 THE COURT: Sure.

19 MR. REED: We're using their offices.

20 THE COURT: Okay.

21 MR. REED: I will find out about the speakerphone
22 equipment immediately.

23 THE COURT: Okay. That's fine.

24 MR. REED: And --

25 THE COURT: Look, I'm going to -- you and Ms. Hager

1 work that out, okay? I'm confident that you'll be able to work
2 that out.

3 So yes, as to -- so here's where are. And tell me
4 whether this -- whether there are other issues we have to deal
5 with. As to Little and Welch, who are employees of a public
6 agency that you wish to depose to authenticate records, Ms.
7 Hager will confirm with you by tomorrow whether she will
8 stipulate to authenticity. That doesn't mean that they're
9 admissible, but that she -- because there may be relevance
10 issues. I'm not dealing with that now.

11 But we don't need the wit -- she'll let you know
12 whether you need the witnesses to authenticate. I don't want
13 you blindsided at trial because you face an objection on
14 foundation grounds, okay?

15 All right. So to David Houseman, who was not on the
16 witness list, you're not going to be able to use David Houseman
17 because you didn't disclose him by the deadline that I applied.

18 MR. REED: That's fair, Your Honor.

19 THE COURT: Okay. You dropped your request to depose
20 Stevie Watson, so we're talking about eight depositions, all in
21 Richmond, for which you've subpoenaed the witnesses, where they
22 will appear on August 8th and 9th. I can't -- it's not up to
23 me to compel them to appear. If you've got -- assuming they
24 do, you can take those depositions. And you'll work out with
25 Ms. Hager so she can participate by telephone, okay?

1 MR. REED: Okay.

2 THE COURT: Are there other issues we need to deal
3 with today?

4 MR. REED: Your Honor, an unrelated issue cropped up
5 last night. I think it was -- when I looked at -- Ms. Hager
6 sent me drafts of the pre-trial order --

7 THE COURT: Yes.

8 MR. REED: -- we're working on for the end of next
9 week. Ms. Hager has proposed to use in another federal piece
10 of litigation, of which I'm a plaintiff, summary judgment
11 motions and, I believe, an order in that case granting a
12 dismissal of our claims by -- a victory against us -- or me by
13 the defendant.

14 However, it's -- within the last two weeks, I -- Ms.
15 Hager may or may not be aware of -- is I applied that matter to
16 the Third Circuit Court of Appeals. And that order's been
17 vacated, and it's been overturned based on my appeal. And
18 there's a new opinion in that. And I don't know -- my
19 documents -- time for submitting documents has passed. But she
20 may be relying on things in that trial court order and motions
21 filed. If those are now mooted because of my victory at the
22 Third Circuit Appeals, I'd send that to her, and I don't know
23 how that would be -- it may be relevant.

24 THE COURT: Let me ask you, have you sent her -- what
25 I understand you to be saying is the Third Circuit reversed the

1 decision of the district court?

2 MR. REED: Yes. Yes, Your Honor.

3 THE COURT: Okay.

4 MR. REED: Per curium.

5 THE COURT: Okay. Send it to Ms. Hager.

6 So if she still intends to try and offer the trial
7 court decision, you'll object and say that -- you'll tell me
8 that the appellate court reversed the decision. So I'm not
9 going to get into ruling now what's admissible and what's not
10 admissible.

11 Ms. Hager, were you aware that the Third Circuit
12 reversed, according to Mr. Reed?

13 MS. HAGER: No, Your Honor, I wasn't.

14 THE COURT: Okay. So look, Mr. Reed, send Ms. Hager a
15 copy of the Third Circuit decision, and you may solve the
16 problem. I'm glad you're raising it now, okay?

17 MR. REED: Okay.

18 THE COURT: All right. Are there any other issues,
19 Mr. Reed, that you want to raise?

20 MR. REED: I really need a babysitter because it takes
21 an awful lot of time for me to do this work, so that would be
22 helpful.

23 THE COURT: Babysitters, I can't help you with.

24 MR. REED: Well, that's -- this action is very
25 difficult. So -- all right. Well, listen, that's -- and I

1 have nothing more at the moment.

2 THE COURT: Okay. Ms. Hager, anything else you want
3 to raise?

4 MS. HAGER: Yes, Your Honor, one matter.

5 THE COURT: Oh, you had sent him a letter that you
6 have a problem about when we have the pre-trial.

7 MS. HAGER: Yes, Your Honor. I found out subsequently
8 my husband is going to be away in Europe that week. I can
9 still come --

10 THE COURT: And he's not taking you?

11 MS. HAGER: -- to New York. I just can't
12 leave -- sadly, no. Before kids, I used to go with him on
13 those trips, which he does often.

14 But I can still come. I just can't leave the kids
15 early, so I can be there by noon --

16 THE COURT: Look, here's what I want --

17 MS. HAGER: -- works for Your Honor.

18 THE COURT: -- you to do. Work out with Mr. Reed and
19 with Deanna Anderson, my courtroom deputy -- let me see. I can
20 look now.

21 MS. HAGER: Okay.

22 THE COURT: You're saying the 14th you can come later
23 in the day?

24 MS. HAGER: I can come. A train would get in at a
25 quarter to 11, so I could be in the courthouse by 12.

1 THE COURT: We can do it -- does 2 o'clock work for
2 you?

3 MS. HAGER: Well, no, because then I'm going to have a
4 problem on the backside --

5 THE COURT: Oh.

6 MS. HAGER: -- getting back in time for them.

7 THE COURT: Well, what time would you like to do it?

8 MR. REED: Your Honor, the thing is --

9 THE COURT: I'm sorry, Mr. Reed, go ahead.

10 MR. REED: I said, you think I'm joking about that
11 babysitting issue. Ms. Hager needs it too.

12 THE COURT: Ms. Hager, what time can you reasonably be
13 here for the hearing?

14 MS. HAGER: The best time -- and I do hate to say this
15 -- but the best time for me would be noon --

16 THE COURT: Okay. Can --

17 MS. HAGER: -- because I can get in --

18 THE COURT: -- you do it at noon, Mr. Reed?

19 MS. HAGER: -- and I can get home.

20 THE COURT: Mr. Reed, can you --

21 MR. REED: Yes.

22 THE COURT: -- do it at noon?

23 MR. REED: Yes.

24 THE COURT: Okay. We'll do it at noon, okay?

25 So we'll change the time --

1 MS. HAGER: I appreciate that.

2 THE COURT: -- for the final pre-trial conference to
3 September 14th, at 12 noon.

4 MS. HAGER: Thank you very much.

5 THE COURT: Okay? Is that all right, Mr. Reed?

6 MR. REED: Yes, Your Honor.

7 THE COURT: Okay. All right.

8 Ms. Hager, anything else?

9 MS. HAGER: No, Your Honor, thank you.

10 THE COURT: All right. Mr. Reed, anything else?

11 MR. REED: No. No, Your Honor, at --

12 THE COURT: Okay.

13 MR. REED: -- this time, no.

14 THE COURT: Let me just say so that -- because this is
15 going to be on the record, so with the depositions of the eight
16 people in Richmond, discovery is closed. Okay? So I want to
17 enable you to take your best shot at proving your case at
18 trial, Mr. Reed. So that's why I'm letting you go forward with
19 these depositions.

20 But this is the close -- the final close of discovery.
21 There's no more discovery after these people are deposed, okay?

22 MR. REED: That's fine with me, Your Honor.

23 THE COURT: Ms. Hager, you understand that as well?

24 MS. HAGER: Yes, Your Honor, thank you.

25 THE COURT: Okay, thanks very much, both of you.

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30

1 We're adjourned.

2 MS. HAGER: Thank you, Your Honor.

3 MR. REED: Bye-bye.

4 (Whereupon these proceedings were concluded at 4:47 PM)

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I N D E X

RULINGS

	PAGE	LINE
Mr. Reed allowed to take depositions of	17	8
government officials if authenticity not		
stipulated to.		
Request to depose David Houseman denied	18	20
Request to depose eight witnesses included on 22		8
witness list granted as specified		

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C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.



ALIZA CHODOFF

AAERT Certified Electronic Transcriber CET**D-634

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Date: August 5, 2016